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December 9, 1999

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Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

EX PARTE

Re: Ex Parte Presentation in CC Docket No. 99-273 and 97-172

Dear Ms. Salas:

On December 8, 1999, Mark N. Rogers of Excell Agent Services, L.L.C., Cara E. Sheppard, and I met with Greg Cooke, Bill Kehoe, Robin Smolen and Dennis Johnson of the Common Carrier Bureau to discuss the availability of local exchange carriers' directory assistance listings to independent directory assistance providers. We left behind the attached summarized explanation of Excell's position. Also referenced in the attachment and in yesterday's meeting is the relationship between the pending rulemaking in CC Docket No. 99-273 and the pending forbearance petitions filed by several Bell operating companies in CC Docket No. 97-172.

The original and two copies of this filing for each of the above-referenced proceedings have been delivered this day to the FCC's Secretary.

Respectfully submitted,

  
Arthur H. Harding

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Provision of Directory Listing Information to Independent  
Directory Assistance Providers Under the  
Communications Act of 1934

(CC Docket No. 99-273)

Mark N. Rogers  
Vice President and General Counsel  
Excell Agent Services, L.L.C.

December 8, 1999

## **I. Excell Agent Services, L.L.C.**

Excell Agent Services, L.L.C. ("Excell"), headquartered in Tempe, Arizona, offers wholesale directory assistance ("DA") and operator services to telecommunications companies in the United States and to foreign carriers seeking DA in the United States. It owns and operates four call centers in Arizona (Phoenix, Mesa, Peoria and Tempe), one center in Rockledge, Florida, and one center in Las Cruces, New Mexico. Excell believes that its operators respond to more DA requests from customers of long distance carriers than any other wholesale DA provider. Excell Global Services, Inc., the parent company of Excell Agent Services, has multiple customer service and transaction based call center locations in the United States, Canada, the United Kingdom and Australia.

## **II. The need for the wholesale DA services.**

Excell primarily provides wholesale DA to interexchange carriers and competitive local exchange carriers ("LECs"). Wholesale DA customers generally rely on the DA services of Excell and other independent DA providers as a more efficient and less costly way to provide DA services to their customers, and many of Excell's wholesale DA customers do not have the capital to invest in real estate, buildings, switch facilities, personnel and the training necessary to self provision DA.

## **III. The DA listings of Bell operating companies.**

The Bell operating companies ("BOCs"), due to their dominant position in the local exchange and exchange access markets, possess the most accurate and complete DA databases (as the FCC has recognized on numerous occasions). The BOCs' DA listings have either been unavailable or available only on unreasonable terms and conditions. In response, Excell has utilized a compiled database and has supplemented the database with DA listings from the BOCs to increase accuracy. The DA databases of the BOCs are the essential inputs of production which allow a wholesale DA provider to compete effectively in the provision of DA.

**IV. Excell's experience with the purchase of DA listings from local exchange carriers.**

- a. Although section 251(b)(3) was intended to promote competition, several LECs are using this provision to avoid competition from Excell and other independent DA providers.**

The FCC has determined that competition in the provision of local telephony will benefit from numerous competing alternative sources for DA, regardless of whether such competing DA providers are carriers or non-carriers. Nevertheless, several LECs have asserted that section 251(b)(3) allows them to refuse nondiscriminatory DA listing access to DA providers that are not also providers of telephone exchange service or telephone toll service.

- b. Section 272(c) refers to unaffiliated entities and not only to competing providers of telephone exchange service or telephone toll service as in section 251(b)(3).**

As a related matter, SBC, in its forbearance petition filed in CC Docket 97-172, has tried to redefine the term "unaffiliated entity" used in the order granting US WEST partial forbearance from the application of section 271 and 272 ("US WEST Forbearance Order"). In the US WEST Forbearance Order, the FCC stated that section 272(c) requires US WEST to make available to unaffiliated entities all of the in-region directory listing information it uses to provide regionwide DA service at the same rates, terms and conditions it imputes to itself. In its petition asking for the same relief granted to US WEST, SBC states that it interprets "unaffiliated entity" to mean only competing providers of telephone exchange service or telephone toll service as defined in section 251(b)(3). The FCC should reject SBC's interpretation and recognize that SBC, consistent with several other incumbent LECs, is attempting to use the definition of "competing provider" in section 251(b)(3) as a way to stall competition from independent DA providers.

- c. The result of the disparate treatment of Excell by the LECs is that Excell must pay an excessively high rate for DA listings in comparison to the "carriers" that seek these same listings under section 251(b)(3).**

An example of this disparate treatment is the manner in which US WEST provides DA listings. US WEST maintains approximately 17,000,000 listings in its DA database, and approximately 8-10% of the database is updated each month. In a recent letter sent to Excell (see attachment), US WEST stated that its average TELRIC price for updates is \$0.0171 per listing. US WEST also stated in its letter that it provides this rate to competitive LECs or the agents of competitive LECs. If

a carrier wants to use US WEST's DA listings beyond that carrier's operating territory, or for toll service, however, the carrier is required to purchase the updates at \$0.025 per listing. Finally, when a carrier intends to provide DA services to its own end users or the end users of other carriers, daily listing updates cost \$0.05 per listing. US WEST will only sell its DA listings and updates to Excell at the most expensive US WEST rate. To purchase approximately 1,700,000 listing updates per month (assuming a monthly update rate of 10%), Excell would have to pay \$85,000 per month and \$1,020,000 per year. In comparison, the approximate yearly rate that a competitive LEC might owe US WEST at US WEST's lowest rates is \$348,840 per year. The \$671,160 yearly difference in what two different types of DA providers would owe for US WEST's DA listing updates alone demonstrates discrimination. Additionally, the letter, written nearly a month after the US WEST Forbearance Order, does not indicate that the listings will include all of its in-region listings.

The FCC's pro-competitive goals are harmed by these disparate rates.

- V. Nondiscriminatory access means that incumbent LECs must treat all parties seeking access to DA listings the same—regardless of whether such listings are sought by an agent of a telephone exchange carrier, an entity that provides call completion services, or any other requesting telecommunications carrier.**

The requirement to provide nondiscriminatory access to DA is not satisfied if the LECs can discriminate between types of competing providers of telephone services (such as between competing providers of telephone toll services and the agents of such carriers, like Excell). Excell has learned that certain LECs provide DA listings at cost based rates, and, therefore, section 251(b)(3) should be interpreted to require all LECs to provide the same cost based rates for DA listings to all classes of carriers.

- VI. The Comments and Reply Comments filed in CC Docket No. 99-273 overwhelmingly support the FCC's suggestion that independent DA providers are entitled to the benefits of section 251(b)(3) as agents of competing providers of telephone exchange service and telephone toll service or as competing providers by virtue of their call completion offerings.**

Competitive carriers agree that an agent of a competing provider of telephone exchange service and/or telephone toll service is entitled to the benefits of section 251(b)(3)—namely nondiscriminatory access to DA listings. In its reply comments in the unbundled network element ("UNE") proceeding, Time Warner Telecom warned that the existence of third-party wholesalers should not be enough to remove DA from the list of UNEs an incumbent

LEC must offer and that the FCC “should examine the extent to which third-party wholesalers continue to rely on [incumbent LECs] for essential inputs of production (such as directory lists).” In its comments in this proceeding, Time Warner Telecom submits that the FCC is authorized to require LECs to provide directory listings to the agents of those carriers that are eligible to obtain listings under section 251(b)(3).

Additionally, Excell offers call completion services which involves the transmission of messages through the public switched telephone network much like any other carrier. This should also qualify Excell for the benefits of nondiscriminatory access to DA as a “provider of telephone exchange and/or telephone toll service.”

OCT. 22. 1999 3:05PM FED REG LAW

NO. 8823 P. 2/3

**U S WEST**  
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John A. Kelley  
President  
Wholesale Markets

October 22, 1999

Mr. Gilbert E. Mauk  
President & Chief Operating Officer  
Excell Agent Services, L.L.C  
2175 West 14<sup>th</sup> Street  
Tempe, AZ 85281

*Response Delivered Via Facsimile as was Original Correspondence  
Sent to Facsimile 602-808-5015*

Dear Mr. Mauk:

I have been asked to respond to your letter to Sol Trujillo, Chairman, President and Chief Executive Officer of U S WEST, Inc., dated October 6, 1999 as it relates to Directory Assistance (DA) listing. This product offering is handled within my organization, Wholesale Marketing. It is apparent from your letter that you are not happy with U S WEST's current position regarding directory listing availability, specifically in regard to our pricing. This response is intended to address your concerns and provide details to support our pricing levels as proper under the law and responsive to market conditions.

#### Current DA Listing Offerings

As you may know, U S WEST currently makes our DA listing information available as an unbundled network element (UNE) to Competitive Local Exchange Carriers (CLEC), or independent DA Providers acting on behalf of CLECs, for the operating territory in which the CLEC is authorized to serve. Listings provided under this statutory provision are made available at TELRIC pricing. When purchasing under this scenario, CLECs are permitted to use the DA listing information for its purposes in providing any lawful form of DA to its local exchange end users.

Your reference to the Texas case and SBC's pricing appear to be references to a UNE proceeding involving TELRIC pricing. As a comparison, U S WEST's TELRIC prices vary across our 14 states, but average out at \$0.0073 per listing for the initial load of the database and \$0.0171 per listing for daily listing record updates. Again, this pricing option is only available under the CLEC or independent DA Provider category as previously mentioned. Furthermore, as you know, we have only seen a Press Release regarding the Commission's most recent actions in the UNE Remand Proceeding. It is not clear whether directory listings themselves will be categorized as UNEs in the future.

U S WEST also has an obligation to provide DA listings to providers of telephone exchange services and telephone toll services on a broader basis under the statutory provisions dealing with dialing parity found



Mr. Gilbert E. Mauk  
October 22, 1999  
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at Section 251(b)(3). When a carrier desires to use the DA listings that it is purchasing either beyond its certified CLEC operating territory, or for toll service, the carrier - or its DA agent - is required to purchase the listings under this latter statutory provision, which is not controlled by TELRIC pricing principles. Under this product offering, listings for both the initial load of the database and for subsequent daily listing activity updates are priced at \$0.025 per listing.

U S WEST also has a third pricing option available for telecommunications carriers who intend to provide DA services to their own end users and the end users of other carriers. This third pricing option allows for further market uses of listing information. Listings for the initial load of the database are priced at \$0.025 per listing; daily listing updates are priced at \$0.05 per listing.

The FCC's National Directory Assistance Order

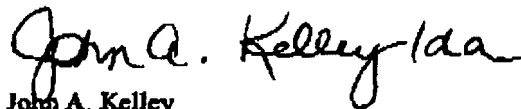
In reply to your citation to the FCC's recent National Directory Assistance Order, U S WEST is of the understanding that this Order does not set any "pricing rules" at all. It simply requires that certain information be provided to others at the same price that U S WEST imputes to itself. U S WEST is in the process of compiling a Cost Allocation Manual (CAM) to be filed with the FCC that will outline how this imputation will occur. We are confident that our proposal will meet the imputation requirements imposed by the FCC.

Access to Accurate, Up-to-Date Listings

U S WEST does not have a full understanding of Excell's issues around access to listing information. U S WEST's practices do not impede Excell's access to accurate, up-to-date listings. We are open to resolving your concerns, and will need additional clarification on the specific areas that need to be addressed.

Your letter references the intent to pursue legal remedies in the event your issues are not resolved. It is U S WEST's intent to resolve concerns in a business environment that facilitate a common understanding. I have asked Jasmin Espy, Vice President-Wholesale Marketing, to contact you personally in establishing a relationship at the "senior management" level in an attempt to avoid any possible litigation. Jasmin Espy can be reached at (303) 896-3237.

Sincerely,



John A. Kelley

cc: Lawrence E. Strickling (FCC), Sol Trujillo (U S WEST), Mark D. Roellig (U S WEST), Jasmin Espy (U S WEST), Dan J. Evanoff (Excell)



## CERTIFICATE OF SERVICE

I, Tonya Y. VanField, hereby certify that a copy of the foregoing *ex parte* presentation in CC Docket No. 99-273 and CC Docket No. 97-172 was served this 9th day of December, 1999, via hand delivery upon the following:

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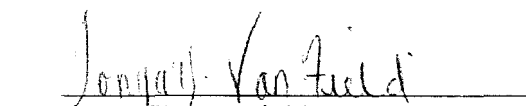
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Tonya Y. VanField